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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES BENNETT,

Defendant and Appellant.

A153918

(City & County of San Francisco
Super. Ct. No. SCN 224299)

Charles Bennett appeals from a judgment following the revocation of his probation. At his revocation hearing, Bennett was assessed a different restitution fine than originally assessed at the time the court imposed and stayed execution of the sentence and placed him on probation. We conclude the trial court was not authorized to order increased amounts of the restitution fines after revocation of probation, and therefore, the judgment must be modified to strike the increased fine amounts and to reinstate the original fines as per the trial court's oral pronouncement at the sentencing hearing on April 4, 2016.

FACTUAL AND PROCEDURAL BACKGROUND

In December 2015, Bennett entered a negotiated plea of guilty to four counts: (1) criminal threats (Pen. Code,¹ § 422); (2) domestic violence (§ 273.5, subd. (a)); (3) assault with a deadly weapon (§ 245, subd. (a)(1)); and (4) assault with

¹ All further statutory references are to the Penal Code.

force likely to cause great bodily injury (§ 245, subd. (a)(4)). He also admitted three prior strike convictions.

The probation officer recommended that Bennett pay a restitution fine of \$300 and a probation restitution fine in the same amount, which was to be stayed. The court (Hon. James Collins) sentenced Bennett to eight years in prison on count 4, imposed concurrent midterm sentences on the remaining three counts, suspended execution of sentence, and placed him on five years' probation. At the April 4, 2016, sentencing hearing, Judge Collins told Bennett, "You're to pay a \$300 restitution fund fine." However, the minute order of the April 4, 2016, sentencing hearing stated: "Defendant shall pay a restitution fine in the amount of \$300 *per convicted felony count* pursuant to PC 1202.4(b)." (Italics added.)

In March 2018, the court (Hon. Charles Crompton) revoked Bennett's probation and sentenced him to the upper term of eight years for count 4, and concurrent midterm sentences of three years on the remaining felony convictions. Judge Crompton also imposed a restitution fine of \$1,200 (\$300 per count) and a parole restitution fine in the same amount pursuant to section 1202.45, and he lifted the stay on the probation revocation restitution fine and ordered Bennett to pay the amount of \$1,200 pursuant to section 1202.44.

Bennett appealed.

DISCUSSION

Bennett argues, the People concede, and we agree the trial court lacked authority to impose a \$1,200 restitution fine and parole and probation revocation restitution fines in the same amounts, because the original restitution fine of \$300 survived the revocation of probation.

Section 1202.4, subdivision (b), provides that "[i]n every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record." When a defendant's sentence includes a period of probation and/or parole, the court must also assess a probation revocation restitution fine and/or

parole revocation restitution fine in the same amount as the restitution fine. (§§ 1202.44, 1202.45, subd. (a).)

Where a restitution fine is initially imposed as a condition of probation, the fine survives a subsequent revocation of probation. (*People v. Chambers* (1998) 65 Cal.App.4th 819, 823 (*Chambers*).) As such, it cannot be increased if probation is revoked. (*People v. Perez* (2011) 195 Cal.App.4th 801, 804–805 (*Perez*) [restitution and probation revocation fines of \$600 reduced to \$200 amount initially imposed]; *People v. Johnson* (2003) 114 Cal.App.4th 284, 307 [restitution and parole revocation fines of \$800 reduced to \$200 amount initially imposed]; *People v. Downey* (2000) 82 Cal.App.4th 899, 921 [restitution and parole revocation fines of \$600 reduced to \$200 amount initially imposed]; *Chambers, supra*, at pp. 822–823 [trial court was without authority to impose second restitution fine of \$500 after initial \$200 restitution fine].)

The instant case falls squarely within the above-cited cases. At the time Bennett was sentenced to probation on April 4, 2016, the trial court ordered him to pay a restitution fine of \$300. Because this fine survived the revocation of probation, the increased restitution fine of \$1,200 was improper. (*Chambers, supra*, 65 Cal.App.4th at p. 823.)

It makes no difference that the April 4, 2016, minute order stated the restitution fine was \$300 “per convicted felony count.” “As a general rule, when there is a discrepancy between the minute order and the oral pronouncement of judgment, the oral pronouncement controls.” (*People v. Contreras* (2015) 237 Cal.App.4th 868, 880.) Here, Judge Collins orally stated at the April 4, 2016, sentencing hearing that Bennett was ordered to pay “a \$300 restitution fund fine,” which mirrored the probation officer’s recommendation. Under these circumstances, we conclude the oral pronouncement prevails over the contrary statement in the minute order. (*Ibid.*)

Accordingly, the restitution fine must be modified and reduced to \$300. By the express terms of the statute, the probation and parole revocation restitution fines must be in the same amount as the restitution fine imposed under section 1202.4. (§§ 1202.44,

1202.45.) Therefore, these fines must also be reduced to \$300 each. (*Perez, supra*, 195 Cal.App.4th at p. 805.)

DISPOSITION

The judgment is modified in part to reinstate the \$300 restitution fine the court originally imposed under section 1202.4, subdivision (b), and to reduce from \$1,200 to \$300 the probation revocation restitution fine imposed under section 1202.44, as well as the parole revocation restitution fine imposed under section 1202.45. The clerk of the superior court is directed to prepare and file an amended abstract of judgment reflecting these modifications, and to deliver a copy of the amended abstract to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

Fujisaki, J.

We concur:

Siggins, P.J.

Wiseman, J.*

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* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.